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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,975	06/30/2003	Carol L. Erdman	53394.000711	6951

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Washington, DC 20006-1109

EXAMINER
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BOGART, MICHAEL G

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3761

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10/04/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/607,975	<b>Applicant(s)</b> ERDMAN, CAROL L.	
	<b>Examiner</b> Michael G. Bogart	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 5-9, 11-13 and 15-58 is/are pending in the application.
- 4a) Of the above claim(s) 27-53 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5, 11-13, 15, 19-26 and 57 is/are rejected.
- 7) ☒ Claim(s) 6-9, 16-18, 54-56 and 58 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections – 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 5, 11, 24-26 and 57 are rejected under 35 U.S.C. § 102(b) as being anticipated by Repke *et al.* (US 4,205,679; hereinafter: “Repke”).

Regarding claim 5, Repke teaches an absorbent article (1) having a front portion (14), a back portion (18), a crotch portion (70) and two side portions (26, 28, 30, 32), the article (1) comprising:

a main chassis (14, 16, 18);

an absorbent portion (66); and

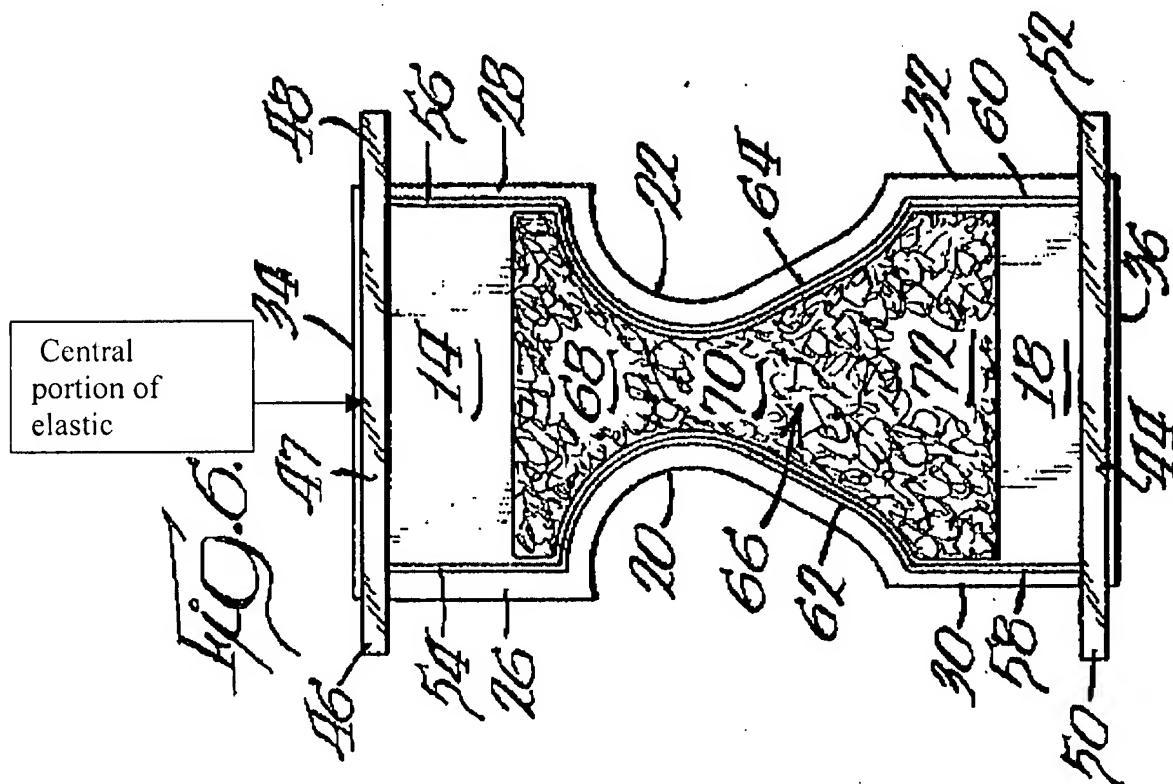
first and second elastic portions (47, 44) operatively associated with the main chassis (14, 16, 18),

the first elastic portion (47) positioned in the front portion (14) of the article (1), the second elastic portion (44) in the back portion (18) of the article (1) and the second elastic portion (44) positioned in the back portion (18) of the article (1),

wherein both the first and second elastic portions (47, 44) have a central portion positioned between the side portions (26, 28, 30, 32) of the article (1) having a lateral width less than a lateral width of the main chassis (14, 16, 18), and

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wherein each central portion extends (from edges (34) and (36), respectively) in a longitudinal direction towards the crotch portion (70)(see fig. 6, infra). The central portion is interpreted herein as being the middle third of each elastic strip as measured in the direction that is transverse to the width of the chassis.



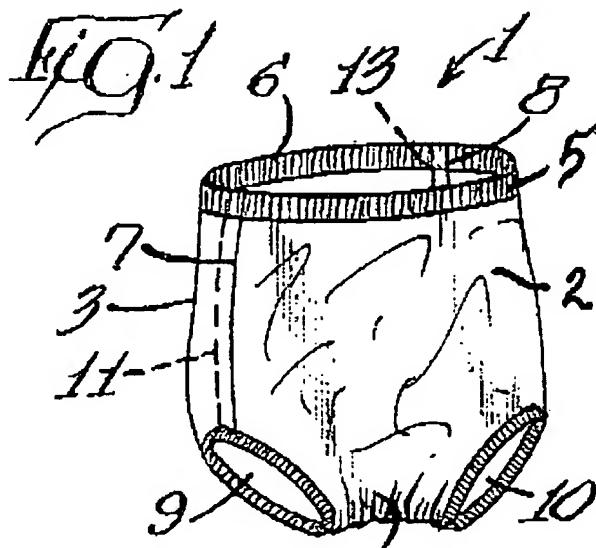
Regarding claim 11, Repke teaches that the first elastic portion (47) has a first central elastic portion (14, 47) corresponding to the front portion (14) of the article (1) and two first side elastic portions (46, 48) corresponding to the side portions (26, 28) of the article (1), and the second elastic portion (44) has a second central elastic portion (18, 44) corresponding to the back portion (18) of the article (1) and two second side elastic portions (58, 60) corresponding to the side portions (30, 32) of the article (1).

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Regarding claim 24, Repke teaches that the first and second elastic portions (47, 44) are rectangular in shape (see fig. 6).

Regarding claims 25 and 26, Repke teaches that the article (1) is a diaper or a pant, see fig. 1, *infra*).

Regarding claim 54, Repke teaches a first carrier layer (12) operatively associated with the elastic member (47, 44).



Regarding claim 57, Repke teaches a lateral dimension of at least one of the first and second elastic portions (47, 44) perpendicular to the (article's) longitudinal direction is a first distance, a lateral dimension of each of the associated side portions (46, 48, 50, 52) of the first and second elastic portions perpendicular to the longitudinal direction is a second distance, and the first distance is greater than twice the second distance (see fig. 6).

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Claims 5, 11-13, 15 and 19-26 are rejected under 35 U.S.C. § 102(e) as being anticipated by Turi *et al.* (US 6,413,249 B1; hereinafter "Turi").

Regarding claim 5, Turi teaches an absorbent article (100) having a front portion (103), a back portion (101), a crotch portion (105) and two side portions (139), the article (100) comprising:

a main chassis (107, 109);

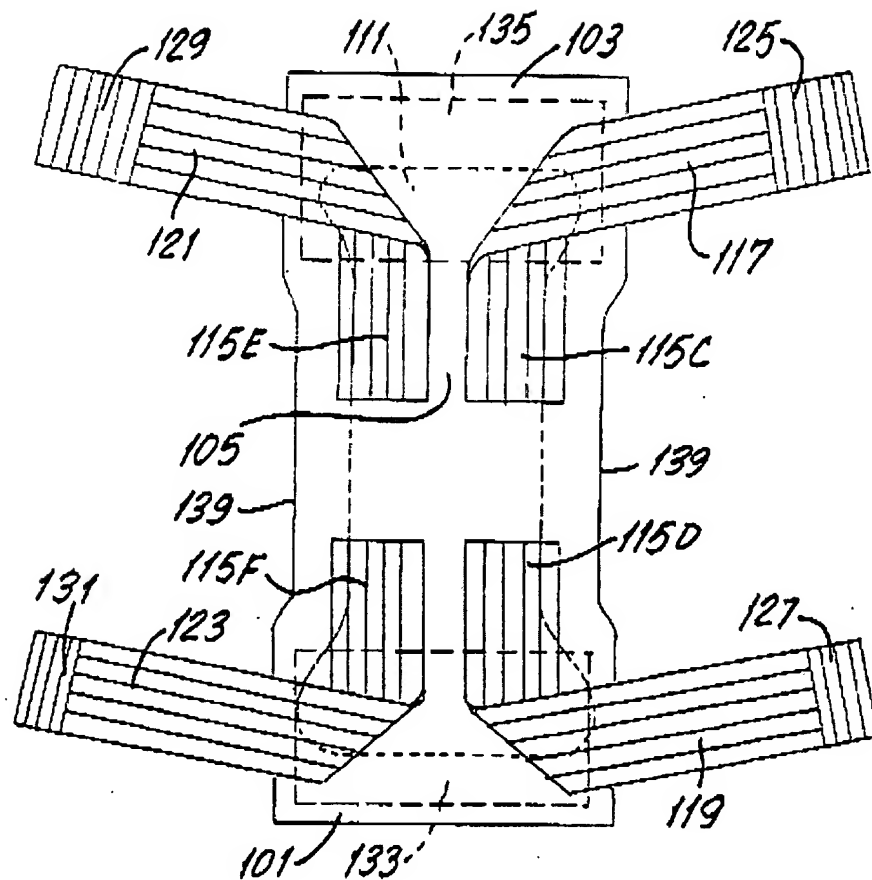
an absorbent portion (111); and

first (115C, 117, 115E, 121) and second (115D, 119, 115F, 123) elastic portions operatively associated with the main chassis (107, 109),

the first elastic portion (115C, 117, 115E, 121) positioned in the front portion (103) of the article (100), and the second elastic portion (115D, 119, 115F, 123) in the back portion (101) of the article (100),

wherein both the first (115C, 117, 115E, 121) and second elastic (115D, 119, 115F, 123) portions have a central portion (115C, 115D, 115E, 115F) positioned between the side portions (139) of the article (100) having a lateral width less than a lateral width of the main chassis (107, 109), and

wherein each central portion (115C, 115D, 115E, 115F) extends in a longitudinal direction towards the crotch portion (105)(see fig. 2A, *infra*). The central portion is interpreted herein as being the middle third of each elastic strip as measured in the direction that is transverse to the width of the chassis.

**FIG. 2A**

With respect to claim 11, the first elastic portion (115C, 117, 115E, 121) has a first central elastic portion (115C, 115E) corresponds to the front portion (103) of the article (100), and the second central portion (115D, 115F) corresponds to the back portion (101) of the article (100). The article (100) further comprises a first side elastic portions (117, 121) and a second side elastic portions (119, 123).

With respect to claim 12, the first central elastic portion (115C) has a depth that is greater than the depth of the first elastic side portion (117), as shown in figure 2A.

With respect to claim 21, the first and second elastic portions can be defined to be circular or oval in shape.



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With respect to claim 22, the first and second elastic portions can be defined to be circular or oval in shape.

With respect to claim 23, the first and second elastic portions can be defined to be diamond shaped.

With respect to claim 24, the first and second elastic portions can be defined to be rectangular, as shown in figure 2A.

With respect to claim 25, the article (100) is a diaper, as disclosed in column 3, line 7.

With respect to claim 26, the article (100) is a pant, as disclosed in column 1, line 9.

### ***Response to Arguments***

Applicant's arguments filed 16 July 2007 have been fully considered but they are not persuasive.

Applicants assert that as amended in claim 5, the elastic portion has a central portion between side portions of the article having a lateral width that is less than the width of the chassis. This argument is not persuasive because the single elastic wais elements can be construed as having multiple portions, including, for example, a middle third, which would be less than the width of the chassis.

Regarding claim 11, see the detailed discussion of that rejection supra, which enumerates element by element how the claim as presently amended is anticipated by the applied references.

Applicant's arguments concerning claims 6, 9, 58, 17, 18 and 54-56 are moot as no art is presently applied against those claims.

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*Allowable Subject Matter*

Claims 6-9, 16-18, 54-56 and 58 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization

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where this application or proceeding is assigned is (571) 273-8300 for formal communications.

For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Bogart  
1 October 2007

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

